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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1150

JOHN O. SCHUSTER, D/B/A GENERAL MACHINE WORKS, AND AS THE A & A TOOL AND SUPPLY COMPANY, PETITIONER

v.

S. H. STURGEON, AS ACTING COLLECTOR OF INTERNAL REVENUE IN AND FOR THE STATE OF OKLAHOMA; H. C. JONES, AS FORMER COLLECTOR OF INTERNAL REVENUE IN AND FOR THE STATE OF OKLAHOMA; AND THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

No opinion was handed down by the District Court. The opinion of the Circuit Court of Appeals (R. 61–63) is reported at 158 F. 2d 811.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 8, 1947. (R. 64.) A

petition for rehearing (R. 65–72) was denied on February 8, 1947 (R. 73). The petition for certiorari was filed on March 22, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the District Court had jurisdiction of this suit to enjoin the collection of federal taxes, despite the provisions of Section 3653 of the Internal Revenue Code prohibiting the maintenance of such a suit.

STATUTE INVOLVED

Internal Revenue Code:

> SEC. 272. PROCEDURE IN GENERAL.
>
> (a) (1) [as amended by Section 203 of the Act of December 29, 1945, c. 652, 59 Stat. 669] *Petition to Board of Tax Appeals.*[1] If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day), the taxpayer may file a petition with the Board of Tax Appeals

[1] The name was changed to The Tax Court of the United States by Section 504 of the Revenue Act of 1942, c. 619, 56 Stat. 798.

for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3653 (a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. * * *

* * * * *

(26 U. S. C. 1940 ed., Sec. 272.)

SEC. 3653. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) *Tax.*—Except as provided in sections 272 (a), 871 (a) and 1012 (a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.[2]

* * * * *

(26 U. S. C. 1940 ed., Sec. 3653.)

SEC. 3772. SUITS FOR REFUND.

(a) *Limitations.*—

(1) *Claim.*—No suit or proceeding shall be maintained in any court for the recovery

[2] Sections 871 (a) and 1012 (a) of the Code contain provisions relative to estate and gift taxes, respectively, similar to the provisions of Section 272 (a) (1) which relates to income taxes.

of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

(2) *Time.*—No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates.

(26 U. S. C. 1940 ed., Sec. 3772.)

STATEMENT

The petitioner (hereinafter referred to as the taxpayer) instituted this action in the District Court, which granted a temporary injunction restraining the collection of taxes (R. 34–37, 37–39); the court below reversed, vacating the temporary injunction (R. 61–63, 64). The allegations of the taxpayer's complaint (R. 1–6) may be summarized as follows:

The taxpayer alleged that he had filed income tax returns for the taxable years here involved,

1937 to 1941, inclusive and had paid the tax shown to be due thereon; that on May 15, 1943, he caused to be filed amended returns for those years, and paid the tax shown to be due thereon; and that in August, 1944, deficiency assessments of income taxes and penalties for those years were made against him. (R. 2.)

The taxpayer further alleged that subsequently he deposited with Acting Collector of Internal Revenue Sturgeon the sum of $15,000 to be applied in payment of any additional tax that might finally be determined to be due; that an audit by competent and qualified auditors disclosed that the aggregate amount of tax owed by the taxpayer was $6,265.50; that since the taxpayer had paid $3,643.53 reported in his returns, he owed only a balance of $2,621.97, plus 50 percent penalties and interest, or the sum of $3,932.96; and that since the taxpayer had paid the Collector $21,456.47, there was an overpayment of tax in the sum of $17,523.51. (R. 2–3.)

The taxpayer further alleged that, notwithstanding the foregoing, Acting Collector Sturgeon had made demand upon the taxpayer for the payment of an additional sum of $59,493.45, and had threatened to distrain upon the taxpayer's property, business and assets, and sell them at public auction; that the deficiency assessments are arbitrary, erroneous, and illegal; that the taxpayer had actually paid all of the tax due and was ready and willing to pay any additional amount that the

court might find to be due; and that the taxpayer's business would be completely destroyed by the threatened forced sale by Acting Collector Sturgeon, which would cause the taxpayer great and irreparable damage and injury for which he had no remedy at law. (R. 3–4.)

Upon the foregoing allegations, the taxpayer in his complaint (filed May 6, 1946), prayed that Acting Collector Sturgeon be permanently enjoined and that the court order the refund to the taxpayer of the amount of taxes paid by him in excess of the amount due. (R. 5–6.)

On May 13, 1946, an amendment (R. 6–7, 24) to the complaint was filed, upon leave granted at a hearing on that day (R. 26), in which amendment it was alleged that on February 9, 1946, the taxpayer had filed claims for refund for the taxes paid for the years 1937 to 1941, inclusive (copies of which claims were attached to the amendment (R. 7–24)), and that the claims were rejected by the Commissioner of Internal Revenue on April 29, 1946.

After further hearing on June 4, 1946, on the taxpayer's motion for a preliminary injunction (R. 26), the court granted leave to the taxpayer to make H. C. Jones, former Collector of Internal Revenue, and the United States, additional parties defendant (R. 26–27). In this amendment (R. 24–25), it was further alleged by the taxpayer that each and all of the defendants were liable for all of the matters set forth in the com-

plaint and the amendments thereto, and judgment was asked against all of the defendants as prayed for in the complaint.

After that hearing (R. 46–58), the court made findings of fact and conclusions of law (R. 34–37), and granted a temporary injunction (R. 37–39), restraining all of the defendants from attempting to collect any additional taxes or deficiency assessments from the taxpayer and from interfering with the taxpayer in the conduct of his business—and also enjoined the taxpayer from disposing of his business or property, except in the usual course of business (R. 26, 62).

Upon appeal taken from that part of the injunction restraining the collection of taxes (R. 39–40, 41), the court below reversed, and vacated the temporary injunction (R. 61–63, 64).

ARGUMENT

1. The court below correctly reversed the District Court and vacated the temporary injunction. The District Court had no jurisdiction to grant the injunction, by reason of Section 3653 of the Internal Revenue Code, *supra* (formerly Section 3224 of the Revised Statutes), which prohibits the maintenance in any court of any suit for the purpose of restraining the collection of federal taxes. *Graham* v. *du Pont,* 262 U. S. 234; *Bailey* v. *George,* 259 U. S. 16; *Dodge* v. *Osborn,* 240 U. S. 118; *Snyder* v. *Marks,* 109 U. S. 189; *Cheatham* v. *United States,* 92 U. S. 85; *State Railroad Tax*

Cases, 92 U. S. 575. The reasons underlying the rule are well stated in *State Railroad Tax Cases, supra,* pp. 613–614.

The complaint and the amendments thereto failed to show facts sufficient to bring the case within any exception heretofore created to the prohibition contained in Section 3653 of the Code, or its predecessor Section 3224 of the Revised Statutes. The collection of a tax has been restrained in a few cases where, in addition to showing an illegal exaction in the guise of a tax, the taxpayer was able to show exceptional and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisprudence—such as the fact that the tax was arbitrarily and oppressively laid on a thing not subject to tax at all (*Miller* v. *Nut Margarine Co.,* 284 U. S. 498, 510), or that further litigation was deemed useless because the merits had already been settled in a prior case (*Dodge* v. *Brady,* 240 U. S. 122, 126; *Rickert Rice Mills* v. *Fontenot,* 297 U. S. 110), or that the assessment was not of a tax payable by the plaintiff "but of a penalty for failure to collect it from another" (*Allen* v. *Regents,* 304 U. S. 439, 449).

No one of the principles established in these so-called "exception" cases is applicable to the instant case, and the court below therefore correctly concluded that the taxpayer was not entitled to injunctive relief. (R. 63.) See also *Burke* v. *Mingori,* 128 F. 2d 996 (C. C. A. 10th),

certiorari denied, 317 U. S. 662; *McMullin* v. *Sheehan*, 95 F. 2d 129 (C. C. A. 8th), certiorari denied, 305 U. S. 607; *Huston* v. *Iowa Soap Co.*, 85 F. 2d 649 (C. C. A. 8th), certiorari denied, 299 U. S. 594. The thing sought to be taxed here (income) is subject to a tax, and there are no exceptional circumstances indicating the inadequacy of the remedy at law. On the contrary, as the court below properly observed (R. 63), there were two complete and adequate remedies available to the taxpayer when the deficiency assessments were made (R. 2) against him in August 1944: one was to pay the tax, file a claim for refund, and on rejection thereof bring a suit at law for recovery; the other was to seek redetermination by the Tax Court, pursuant to the provisions of Section 272 (a) (1) of the Code, *supra*, with the right of review by the appellate courts and by this Court upon certiorari, pursuant to Sections 1141 and 1142 of the Code. If a taxpayer does not desire or is unable to pay a deficiency asserted against him, he may seek a redetermination by the Tax Court—and, as the court below correctly pointed out (R. 63), be secure from distraint until the decision of the Tax Court becomes final. In this case, if payment of the deficiencies assessed in August, 1944 was burdensome or impossible for the taxpayer, and if, as claimed (R. 3), the deficiencies were arbitrary and erroneous, the taxpayer could have obtained relief by an appeal to the Tax Court—

but he failed to do so, and later sought injunctive relief to take the place of his remedy at law. The aid of a court of equity may not be invoked in such circumstances.

2. In view of the foregoing, it is obvious that there is no conflict, as alleged (Pet. 5), with *Miller* v. *Nut Margarine Co., supra.* Nor is there any conflict, as claimed (Pet. 5), with *Midwest Haulers* v. *Brady,* 128 F. 2d 496 (C. C. A. 6th), or *John M. Hirst & Co.* v. *Gentsch,* 133 F. 2d 247 (C. C. A. 6th), where, upon the particular facts there presented, the granting of injunctive relief was held to be justified. In the *Midwest Haulers* case, aside from the peculiar circumstances presented by the facts—such as the fact that the taxpayer had failed to collect part of the taxes from its alleged employees—the taxes involved were social security taxes, with respect to which there was no right of appeal to the Tax Court to seek a redetermination before payment, as there was here. Likewise, in the *Hirst* case, there was no opportunity to seek redetermination by the Tax Court with respect to the taxes there involved.

3. The taxpayer's suggestion (Br. 23–26) that the District Court obtained jurisdiction of this case as a suit for refund and hence acquired jurisdiction for all purposes—including the granting of injunctive relief—is clearly without merit. In addition to other grounds readily apparent in the record, the simple answer is that the trial

court was without jurisdiction of the case as a suit for refund against *any* of the defendants, since the claims for refund had been filed only three months before the commencement of the action and had not been rejected. (R. 35–36, 56.) See Section 3772, (a) (1) and (2) of the Code, *supra*. The "conduct" of the Government cannot possibly be regarded as a "rejection" of the claims (cf. R. 36, 56) or as a "decision thereon" by the Commissioner so as to confer jurisdiction over the suit upon the court under Section 3772 (a) (2).

CONCLUSION

The decision below is correct. It turns upon the particular facts of the case, and is in keeping with applicable decisions of this Court. There is no conflict of decisions. The petition should therefore be denied.

Respectfully submitted.

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APRIL 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947